

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-135809-15

Date:

March 31, 2016

Legend:

Fund =

State =

Date 1 =

Date 2 =

Date 3 =

Month =

Country =

Advisor =

Date 4 =

Date 5 =

Date 6 =

Dear _____ :

This is in reply to a letter dated October 29, 2015, and subsequent correspondence, requesting an extension of time for Fund to file an election under section 853(a) of the Internal Revenue Code with respect to certain foreign taxes that were paid by Fund.

FACTS

Fund is a non-diversified, closed-end management investment company. It is registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended. It was incorporated under the laws of State on Date 1 and began operating on Date 2. It has elected to be taxed as a regulated investment company ("RIC") under subchapter M of the Code. Fund's overall method of accounting is the accrual method, and its taxable year is a fiscal year ending on the final day of Month.

A significant part of Fund's investment strategy is investing in equities traded on foreign markets. It seeks long-term capital appreciation primarily through investments in smaller capitalization companies in Country, a foreign jurisdiction. Fund is subject to foreign withholding tax on certain dividends it receives from its investment in foreign securities. For its fiscal year ended Date 3, Fund met the requirements of section 853(a) of the Code. Foreign taxes described in section 901(b) of the Code were withheld from dividends received by Fund. Fund intended to file the election in section 853(a) to have its shareholders treated as if they had paid their share of the foreign taxes paid by Fund, and stated that intention in its annual report of Date 4.

Fund engaged Advisor to audit its financial statements and provide other services. These other services included the preparation of Fund's Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, for its fiscal year ended Date 3, and Form 7004, Application for Automatic Extension of Time to file Certain Business Income Tax, Information, and Other Returns for that fiscal year. Advisor coordinates its services with Fund's manager.

On Date 5 Advisor learned that it was covered by an independence restriction arising under the Securities and Exchange Commission's Rules and Regulations and was therefore unable to provide audit services to Fund, and resigned as auditor. Advisor inadvertently failed to prepare Form 7004 to extend the time to file Fund's 1120-RIC. Fund's manager inadvertently overlooked the failure to file Form 7004 because the manager was focused on the need to appoint another auditor and to complete an audit for Fund for the fiscal year ended Date 3 under significant time constraints. As a result of the failure to file a timely Form 7004, Fund did not file a timely Form 1120-RIC and did not make a timely election under section 853(a).

On Date 6 Advisor discovered that Fund had not filed a timely Form 7004 and that no timely election under section 853(a) had been made. Fund's manager also discovered the failure to file Form 7004 in consultations with Fund's assistant manager. Advisor advised the manager to request an extension of time to file Fund's 110-RIC.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief requested will not result in Fund having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Fund does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time it requested relief, and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.
5. Fund is not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer.

In addition, affidavits on behalf of Fund have been provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 853(a) of the Code provides that a RIC that meets the requirements of section 853(a)(1) and (2) may make an election with respect to certain foreign taxes paid by the RIC during the taxable year to foreign countries and possessions of the United States. Under section 853(b)(2)(A), if this election is effective for a taxable year, each shareholder of the RIC shall include in gross income and treat as paid by him his proportionate share of such taxes.

Under section 1.853-4(a) of the Income Tax Regulations, to make an election under section 853 for a taxable year, a RIC must file a statement of election as part of its Federal income tax return for the taxable year. Section 1.853-4(b) provides that this election must be made no later than the time prescribed for filing the return (including extensions).

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Moreover, a taxpayer will be deemed not to have acted in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been

affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Fund has shown good cause for granting a reasonable extension of time to make the election under section 853(a). The extension of time to make this election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of the election in section 853(a) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Fund otherwise qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transactions described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)